

**ST 00-25**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No.</b>
<b>v.</b>	)	<b>IBT #</b>
	)	
	)	
<b>ABC, INC.</b>	)	
<b>Taxpayer</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Heidi Scott, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Gerry Corn for ABC, Inc.

Synopsis:

The Department of Revenue ("Department") conducted an audit of ABC, Inc. ("taxpayer") for taxes owed for the periods of July 1, 1992 to November 30, 1993 and December 1, 1993 to August 31, 1999. As a result of the audit, the Department issued two Notices of Assessment ("Notices") for taxes, interest, and penalties. The taxpayer timely protested the Notices. An evidentiary hearing was held during which the parties presented stipulations and the taxpayer requested that the penalties be abated due to reasonable cause. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

### FINDINGS OF FACT:

1. The taxpayer is located in Some State. (Dept. Ex. #1, 2)
2. After auditing the taxpayer for the time period of July 1, 1993 through August 31, 1999, the Department concluded that the taxpayer has sufficient nexus with the State of Illinois to require the taxpayer to collect and remit use taxes to the Department.
3. On December 29, 1999, the Department issued two Notices of Assessment to the taxpayer for use taxes owed for the time period of July 1, 1993 through August 31, 1999. The Notices include penalties for the late filing and late payment of the taxes. The Notices were admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, 2)

### CONCLUSIONS OF LAW:

The Department imposed penalties for the late filing and late payment of the taxes pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 et seq.) Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalties and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department’s regulations concerning reasonable cause provide in part as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file

and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

The taxpayer argues that prior to the audit, the taxpayer was not aware of any nexus relationship with the State of Illinois. At the end of the audit, the taxpayer paid the assessed taxes and interest. The taxpayer is now registered to collect and remit use taxes to Illinois. The taxpayer contends that the penalties should be abated because the non-filing on the part of the taxpayer was not intentional, and the taxpayer claims to have made every effort to comply with the Illinois tax laws.

The reasons provided by the taxpayer are insufficient for abating the penalties due to reasonable cause. Although the taxpayer may have made a good faith effort to pay the taxes once the audit was completed, the regulation requires a good faith effort at the time that the original returns were due to be filed and paid. The taxpayer admitted that no effort was made to determine whether there was a responsibility to collect and remit the taxes to Illinois. (Tr. pp. 6-7) The taxpayer simply contends that it is a small company and was unaware of its duty concerning the taxes. Without any evidence of an effort on the part of the taxpayer to determine its tax liability, an abatement of the penalties is not warranted.

Recommendation:

For the foregoing reasons, it is recommended that the penalties be upheld.

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Linda Olivero  
Administrative Law Judge

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